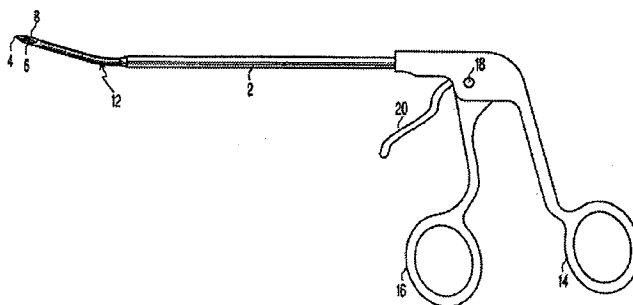


REMARKS

Claims 1-5, 11 and 12 are pending in this application. Claims 15 and 16 have been canceled and their limitations have been incorporated in amended independent claim 11. Claims 1 and 11 have been amended. No new matter has been introduced.

Claims 1-4 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nord (U.S. Patent No. 6,074,403) ("Nord") in view of Hooven et al. (U.S. Patent No. 6,464,701) ("Hooven"). This rejection is respectfully traversed.

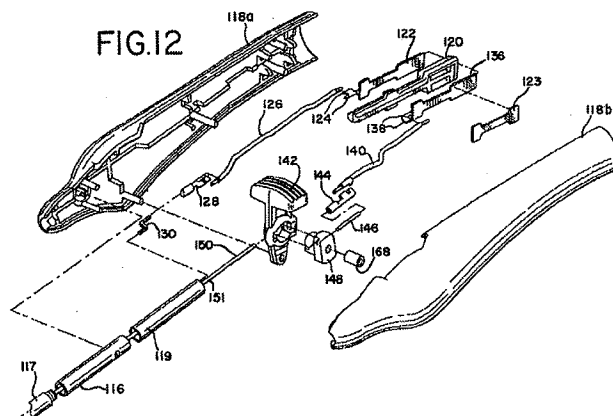
The subject matter of claims 1-4 would not have been obvious over Nord and Hooven, considered alone or in combination. The cited references do not disclose or suggest all limitations of claim 1. Nord does not disclose or suggest "a single lever disposed pivotably on the handle and manipulable by a user's thumb . . . to toggle in an arc between two opposed positions, the two opposed positions being symmetric with respect to each other relative to a direction transverse to a longitudinal axis of the shaft," as claim 1 recites. As shown in Fig. 1 of Nord (reproduced below), the suture retriever of Nord is provided with a lever 20 which "locks the jaw in a closed position" (col. 2, ll. 62-63). Lever 20 of Nord is not designed to "toggle in an arc between two opposed positions . . . being symmetric with respect to each other relative to a direction transverse to a longitudinal axis of the shaft," as in the claimed invention.



Nord also fails to disclose a "lever [that] includes a cam mechanism that engages and cooperates with the rod through a spring that pushes the rod against a cam surface and moves the rod longitudinally within the shaft to operate the articulating mechanism." The Examiner concedes

that Nord “is silent on how the articulating member is attached to the lever (actuator).” However, the Examiner asserts that Hooven “teaches that it is well known to use a rod linking an end effector with an actuating lever wherein the lever includes a cam mechanism (148) that engages and cooperates with the rod (150) to move the rod longitudinally within the shaft” (Office Action at 2).

The Examiner is incorrect. Element 148 of Hooven, shown below, is a “pivot connector” which connects the thumb lever (142) to push rod (150), not a cam mechanism that engages and cooperates with a rod through a spring that pushes the rod against a cam surface and moves the rod longitudinally.



A person skilled in the art would also not have been motivated to combine Nord with Hooven. On one hand, Nord relates to suture retrieving instruments provided with a particular tip having an opening provided with a notch that allows the suture captured to slide into the notch. On the other hand, Hooven relates to bipolar electrosurgical instruments with blades having a particular configuration and forming electrodes attached to a bipolar RF source. Thus, one skilled in the art would not have been motivated to combine these two disparate references (i.e., the suture retriever of Nord with the bipolar electrosurgical instrument of Hooven).

One skilled in the art would also not have been motivated to consider Nord to arrive at the claimed invention. Nord was cited as “prior art” by Applicants in the “Background of the Invention” section of the present application, where it is described that “since the introduction of the

instruments set forth in the above-noted patent [the Nord patent], it has been found that most surgeons do not actually utilize the finger loops during surgery, but instead prefer to activate the instrument jaw by simply pushing on the outside of the moveable finger loop” (§[0004]). Thus, if anything, Nord teaches against the claimed invention, and one skilled in the art would certainly not have been motivated to consider Nord to arrive at the claimed invention. For at least these reasons, the Office Action fails to establish a *prima facie* case of obviousness, and withdrawal of the rejection of claims 1-4 is respectfully requested.

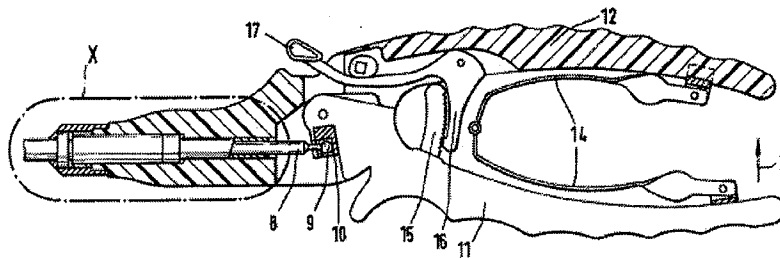
Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nord in view of Hooven and further in view of Wales (U.S. Patent No. 5,800,449) (“Wales”). This rejection is respectfully traversed.

Nord, Hooven and Wales (alone or in combination) do not disclose or suggest all limitations of dependent claim 5 and of independent claim 1. As noted above, Nord and Hooven fail to disclose or suggest all limitations of claim 1. Wales teaches an electrosurgical element with a knife housing positioned between the jaws of the end effector and including an elongated slot that receives a knife blade, and not the limitations of the claimed invention. For at least these reasons, the subject matter of claim 5 would not have been obvious over the cited references, and withdrawal of the rejection of this claim is also solicited.

Claims 11 and 12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nord in view of Dingler (U.S. Patent No. 6,071,299) (“Dingler”). This rejection is respectfully traversed.

Nord and Dingler (alone or in combination) do not disclose or suggest all limitations of claims 11 and 12. Nord teaches a finger ring-actuated structure for a suture retrieving device (which is finger-operated in a scissor-like mode), and not a structure with a “pliers-like grip” and with a stationary handle and a movable lever that are “adapted to be gripped by a user’s palm without the need for finger or thumb rings,” as claim 11 recites. Nord fails to illustrate a handle with “a multi-member, pliers-like grip” to allow a user to manipulate the instrument without using fingers or thumb rings.

Dingler fails to address the deficiencies of Nord. Dingler does not disclose or suggest an “arthroscopic instrument” with “a shaft having a sharp distal tip for capturing and retrieving suture within a patient’s body,” as claim 11 recites. The instrument of Dingler, shown below, is a forceps insert, and not a suture retrieving instrument with a “sharp distal tip” to retrieve suture passing through body tissue, as in the claimed invention.



Dingler also fails to disclose or suggest an instrument with “a curved stationary handle” and “a curved movable lever” with “a spring arrangement disposed between the curved stationary handle and the curved movable lever to urge the instrument into a normally open position,” as claim 11 recites. Handle arms 11 and 12 of Dingler are actuated by “a latching block consisting of a tooth latch 15 and a blocking hook 16” (col. 2, ll. 19-20). For this, Dingler teaches that “releasing the latching it is necessary to actuate the lever 17 of the blocking hook 16, by which means the blocking hook 16 comes out of engagement with the tooth latch 15” (col. 2, ll. 20-23). Thus, handle arms 11 and 12 of Dingler are not urged into “a normally open position,” and definitely are not urged into “a normally open position” by “a spring arrangement,” as in the claimed invention.

Applicants also submit that a person of ordinary skill in the art would not have been motivated to combine the teachings of Nord with those of Dingler, to arrive at the claimed invention. The crux of Nord is a surgical suture passer having a particular tip with an opening provided with a notch that allows the suture captured to slide into the notch. In contrast, the crux of Dingler is a forceps instrument with an overload buffer 22 (formed as a rubber-elastic part) which is “deformed planely and its periphery bulges out in the radial direction” when overloading occurs (col. 2, ll. 42-44). Thus, a person of ordinary skill in the art would not have been motivated to

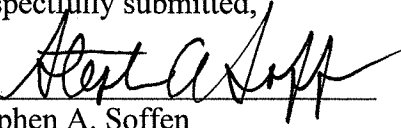
combine the forceps instrument with the overload buffer of Dingler with the suture manipulator of Nord.

A person of ordinary skill in the art would also not have been motivated to consider Nord to arrive at the subject matter of claim 11. Nord was cited as "prior art" by Applicants in the "Background of the Invention" section of the present application, where it is described that "[S]ince the introduction of the instruments set forth in the above-noted patent [the Nord patent], it has been found that most surgeons do not actually utilize the finger loops during surgery, but instead prefer to activate the instrument jaw by simply pushing on the outside of the moveable finger loop" (§[0004]). Thus, if anything, Nord teaches against the claimed invention, and one skilled in the art would certainly not have been motivated to consider Nord to arrive at the subject matter of claim 11. For at least these reasons, the Office Action fails again to establish a *prima facie* case of obviousness, and withdrawal of the rejection of claims 11 and 12 is respectfully requested.

Allowance of all pending claims is solicited.

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Respectfully submitted,

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